*** T H E H O N ' B L E S R I J U**

+ W.P.No. 20203 of 2006

% 1 5 - 1 2 - 2 0 0 6

S m t . S u j a t h a S a y a r w a r .

. . P e t i t i o n

V s .

$ The Commissioner, Adilabad Municipality, Adilabad.

. . R e s p o n

< G I S T :

> H E A D N O T E :

! C o u n s e l Sri S. Surender Reddy t i t i o n e r

^ C o u n s e l f o r r e s p o n d e n
C o u n s e l f o r r e s p o n d e n t

? C A S E S R E F E R R E D : -

THE HONOUABLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.20203 of 2006

Between:

Smt.Sujatha Sayarwar,
W/o. Late Sri Subhash Sayarwar. .. **PETITIONER**

and

The Commissioner,
Adilabad Municipality,
Adilabad.

.. RESPONDENTS

-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-

ORDER:

This court ordered notice before admission on 27-09-2006 and then ordered Rule Nisi on 27-10-2006.

A counter affidavit is filed by respondents 2 and 3.

Heard Sri S.Surender Reddy, learned counsel representing the petitioner, Sri Polisetty Radhakrishna, learned Standing Counsel representing the 1st respondent and Sri Satish Deshpandey, learned counsel representing respondents 2 and 3.

The writ petition is filed for a Writ of Mandamus declaring the action of the 1st respondent in issuing proceedings No.F1/83/2005, dated 10-03-2006, for mutation of the house property by allotting separate house numbers as 7-7-44/J/I and 7-7-44/J/3, Vidyanagar, Adilabad, in favour of 2nd and 3rd respondents without considering the objections of the petitioner as illegal, arbitrary, unjust, violation of principles of natural justice, violation of Articles 14, 16 and 21 of the Constitution of India and contrary to the Rules framed under the A.P. Municipalities Act and be pleased to set aside the same and consequently direct the 1st respondent not to mutate the house property in the name of 2nd and 3rd respondents and pass such other suitable orders.

It is stated by the writ petitioner, Smt.Sujatha Sayarwar, that she is the daughter-in-law of the husband of the 2nd respondent and sister-in-

law of the husband of the 3rd respondent herein. Her husband is the elder son and the 3rd respondent is the wife of the younger son of the 2nd respondent. Her husband died on 25-11-1985 leaving behind him the writ petitioner and her two daughters.

It is also stated that the petitioner is the owner and possessor of the house bearing No.7-7-44/J at Vidyanagar colony, Adilabad town. The house was constructed in the said plot and the same stands in the name of her husband Sri Subhash and the said plot was allotted in his name by the Mandal Revenue Officer, Adilabad, and the same was registered in the 1st respondent's office. After the death of her husband in the year 1985, she had been enjoying the said property and from the beginning she had been paying all the necessary taxes pertaining to the plot, which is measuring 60' x 100'. Her father-in-law and brother-in-law started harassing by encroaching upon the land by creating false documents showing that the plot is in the name of their wives i.e., respondents 2 and 3.

It is also further stated the 1st respondent vide proceedings ROC.No.E1/73/HSC/2002, dated 30-03-2002, sanctioned the House Service Connection on the application of the petitioner in her name. Subsequently, on the application made by her daughter, the 1st respondent also issued proceedings No.A2/253/2003, dated 03-11-2003, and gave the certificate that the house bearing No. 7-7-44/J at Vidyanagar, Adilabad, stands in the name of her husband as per the office records from 1978 to till date. Inspite of that, her father-in-law and brother-in-law started creating problems stating that part of the said house belongs to their wives. It is also stated that as the petitioner is not having any male member support, the husbands of 2nd and 3rd respondents are creating several problems to the petitioner and they sold

part of the plot to another person without informing her or without her consent. Several other factual details had been narrated, in detail, in para 5 of the affidavit filed in support of the writ petition. It is also stated that a legal notice, dated 01-03-2006, was issued to the 1st respondent and requested not to mutate the property in the name of respondents 2 and 3. Inspite of that, respondents 2 and 3 tried to obtain the mutation certificate. However, the 1st respondent, without considering the legal notice issued by her and without considering her objections, granted mutation certificate in the names of respondents 2 and 3 on 10-03-2006.

The Proceedings of the Mandal Commissioner, Adilabad Municipality, dated 10-03-2006, read as hereunder:

> "Smt. Leela Bai W/o Yadav Rao and Smt Vijaya w/o Chandrakanth have submitted an application vide reference cited and requested to mutate the house bearing Municipal No.7-7-44/J in favour of them. In support of their claim, they have submitted a copy of patta certificate No.1246/1997 dated 22-06-2002 issued by the MRO, Adilabad, by regularizing encroachment of Government land.
>
> Since, there is objection petition submitted by Smt.S.Sujatha, W/o. Late Sri S.Subhash, the matter has been referred to the municipal standing counsel for legal opinion. The municipal standing counsel in his opinion dated 28.02.2006 has clearly mentioned to mutate the house bearing Municipal No. 7-7-44/J located in Vidyanagar in favour of the applicants by allotting separate municipal Numbers to the extent of encroachment by the applicants and the Revenue Inspector of this office has also recommended for mutation as above.
>
> Hence, in view of the above, the mutation of name in respect of house bearing Municipal No.7-7-44/J is ordered in favour of Smt.Leela Bai, W/o.Yadav

> Rao by allotting a separate Municipal No.7-7-44/J/1 and property tax is levied by Rs.624-00 per annum with effect from 01-04-2005 and another separate municipal No. 7-7-44/J/3 is allotted to Smt. Vijaya, W/o. Chandrakanth and the property tax is levied for Rs.1312-00 per annum w.e.f. 01.04.2005. The existing No.7-7-44/J is retained unchanged.
>
> Further, it is informed that this order of mutation is valid only for the purpose of collection of tax and does not confer any legal rights or ownership over the above property."

A counter affidavit is filed by respondents 2 and 3 denying several allegations, but, however, admitted the relationship. It is averred in para 5 of the counter affidavit that in the year 1968, the father-in-law of the petitioner encroached upon a piece of land admeasuring 60 x 100 feet, out of the land bearing Survey No.31 situated at Bhoktapur, Adilabad and constructed a small house thereon. Later, it was assigned house No.M.No.7-7-44/J in the year 1978. Thereafter, the then Thasildar, Adilabad, passed order for his eviction there from. But, on the representation of petitioner's father-in-law and other encroachers, they were allowed to remain there. In the year 1979, the father-in-law of the petitioner was prosecuted for the offence punishable U/s.346/360 of A.P. Municipality Act and was sentenced to pay fine of Rs.50/-. It is further stated that the petitioner's husband, her father-in-law and other family members used to reside jointly in their house situated at Brahmanwadi. As the said house was not sufficient to accommodate all the members of the family, the husband of the petitioner, who got married in the year 1975, shifted to the house constructed by her father-in-law. Thus, Mr.Subhash Sayarwar along with petitioner shifted to the house in the year 1978. It is further stated that the father-in-law of the petitioner was in government

service and had to work at different places out of Adilabad. In the absence of petitioner's father-in-law, petitioner's late husband Mr.Subhash used to pay Municipal Tax for the said house as he was residing in the house. It appears that the Municipal authorities by mistake recorded Mr.Subhash name as the owner of the house, but in fact the father-in-law of the petitioner by name Mr.Yadav Rao Sayarwar is the owner of the house. In the year 1986, the father-in-law of the petitioner sold part of house to one Ashanna to meet the expenses of marriage of his daughter. In the year 1991, the father-in-law of the petitioner divided the house into three parts and gave one part to the petitioner, one part to the wife of his son, Chandrakanth (Respondent No.3 herein) and one part to his wife (Respondent No.2) and reported the same to the Municipal authorities. On that basis, the Commissioner, Municipal Council, Adilabad, passed order and assigned numbers to the house of petitioner as M.No.7-7-44/J/3, respondent No.2 as M.No.7-7-44/J/2 and respondent No.3 as M.No. 7-7-44/J/1. The petitioner constructed house over her plot in the year 2001. Mr.Chandrakanth, husband of respondent No.3, constructed house over the plot given to his wife by borrowings loan from Union Bank of India, Adilabad, in the year 2003. On the application of respondents 2 and 3, respondent No.1 altered the ownership in their record and reassigned house numbers to respondent No.2 as M.No. 7-7-44/J/1, respondent No.3 as M.No.7-7-44/J/3 and the petitioner as M.No.7-7-44/J, on 10.03.2006. At no point of time, the petitioner raised any objection to the acts of her father-in-law.

It is further stated in para 6 of the counter affidavit that the suits filed by the petitioner and respondents 2 and 3 are pending before the Junior Chief Judge, Adilabad. In the impugned order, dated 10-03-2006, it is mentioned that the objection filed by the petitioner was referred to

Municipal Standing Council for legal opinion. The Municipal Council gave his opinion, dated 28-02-2006. As per the opinion, mutation was ordered by assigning separate municipal numbers. It is further stated that the impugned order is valid only for the purpose of collection of tax and does not confer any legal rights or ownership over the property.

Andhra Pradesh Municipalities (Alteration of Ownership of Property in Assessment Books) Rules, 1966, in G.O.Ms.No.1059, Municipal Administration, 15th December, 1966, as amended by G.O.Ms.No.517, dated 04-10-1974, A.P.G.G., R.S.P.I., dated 31-10-1974, made in exercise of the powers conferred by sub-section (1) of Section 326 of the Andhra Pradesh Municipalities Act, 1965, would govern the present case.

Rules 3 of the said Rules, dealing with Transfers by voluntary action of owner, read as hereunder:

> "In case of absolute transfer of title, the entries relating to property in the assessment books may be altered in accordance with application made in this behalf by either or both the parties to the transfer. Every application for alterations of entries shall be made in writing and signed by the person or persons making it. It may be sent by post or presented in person or by duly authorized agent, or through an officer of the Registration Department. Where such an application is presented by both the parties to the transfer and one of them is the owner whose name appears in the assessment book, change of registry entries as requested may be ordered at once. But where only one of the parties to the transfer makes the application, notice shall be served on the other party. Where the said owner is not a party to the transfer, notice shall also be issued to him whether the application for alteration of entries in the assessment book is presented by both the parties or one of them. If the said owner objects to the proposed alterations,

> no alterations shall be made unless the person who claims to be the owner produces the document whereby the ownership of the property has been transferred to him. Where only one party to the transfer applies and the other either objects or is silent, the parties should produce relevant documents in support of their claims. In the absence of any such documents the claims should be established by secondary evidence, such as statements of respectable persons and tax receipts. A month's time shall be allowed for filling objections; and, if any objection is made, an enquiry shall not be held and unless the objection is found to be valid, entries in the assessment book shall be not altered."

It is needless to say that the said Rules specify, "notice shall be served on the other party".

It is needless to say that the writ petitioner and her daughters would be the aggrieved or the affected parties by virtue of the mutation impugned in the present writ petition. It is not the case of the 1st respondent that any such notice, in fact, had been served either on the writ petitioner or on the daughters of the writ petitioner.

In view of the facts and circumstances of the case, the impugned order is hereby set aside and the 1st respondent to give opportunity by serving respective notices on the petitioner and if necessary, on the daughters of the petitioner and also on respondents 2 and 3, and pass appropriate orders in relation thereto, as early as possible.

With the above direction, the writ petition is disposed of. No costs.

15-12-2006

Note:
Issue C.C. by one week.

(B/o)
Prv